THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.26408 OF 2005

Dated: 09-12-2005

Between

Varri Abba Rao, S/o. Appanna, R/o. Veeravasaram Village and Mandal, West Godavari District and others.

...PETITIONERS

AND

The Deputy Commissioner of Endowments, Endowments Department, Kakinada, East Godavari District and others.

...RESPONDENTS

ORDER:

Petitioners seek a Writ of Mandamus to declare the action of the third respondent in proposing to auction the petitioners' lands situated in Sy.No.33.32 in an extent of Ac.11.04 cents, Sy.No.225 in an extent of Ac.5.04 cents and Sy.No.794 to the extent of Ac.12.81 cents situated at Veeravasaram Mandal, West Godavari District on 09.12.2005 as illegal and arbitrary.

Learned counsel for the petitioners submits that the petitioners admittedly are the lessees in respect of the third respondent temple lands and they have been paying maktha regularly. It is further submitted that the Government amended the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') and as per Section 82 of the Act all the existing leases stand cancelled from the date of allotment.

However, it appears that the Executive Officer – third respondent on 21.06.2005 recommended extending the leases for the year 2005-06 to 2007-08 based on the enhanced payment of Maktha. The recommendations of the third respondent have been sent to the first respondent for consideration but so far no orders have been passed on the said recommendations. While so, the third respondent issued notification dated 27.11.2005 auctioning the lands of the third respondent temple for the leasehold right of the said lands, scheduled to be conducted on 09.12.2005. But the petitioners approached this Court on the date of auction stating that the said notification was not at all given vide publicity and the pamphlets were issued only on
08-12-2005. Hence, they have rushed to the Court.

The contention of the learned counsel for the petitioners that even though the leases of the petitioners have been cancelled by virtue of Section 82 of the Act they shall be treated as encroachers under Section 83 of the Act cannot be accepted as a similar contention has been repelled by a Division Bench of this Court in WP.No.4974 of 2004 and batch dated 24.06.2005 stating that Section 83 of the Act would not apply to cases which are covered by Section 82 of the Act where leases have been granted and which stands cancelled and the persons holding the leases under Section 82 of the Act cannot be termed as encroachers. Therefore, the notification issued for public auction of the leasehold rights of the third respondent temple lands cannot be termed as illegal and arbitrary.

In view of the aforesaid facts and circumstances of the case, this Court is not inclined to declare the notification issued by the third respondent proposing to auction the said temple lands as illegal and arbitrary. However, as the petitioners state that there exists a standing crop raised by them and it is yet to be harvested within a short period, this Court grants liberty to the petitioners to make an application before the third respondent and on such an application being filed the third respondent may consider and pass appropriate orders in accordance with law.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

December 9, 2005

Note: Furnish C.C. of the order in two days

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